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8
9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA
11

12 UNITED STATES OF AMERICA,

13 Plaintiff,

14 v.

15 FREDDIE LOPEZ,

16 Defendants.

CASE NO.: 15CR7170

Hon. Marilyn L. Huff

Hearing Date: September 14, 2020

**MOTION TO DISMISS PETITION
AND FOR IMMEDIATE RELEASE
OF MR. LOPEZ**

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18 This case is before this Court on an Order to Show Cause in a criminal case
19 that initiated as a treaty transfer. On December 23, 2015, jurisdiction was
20 transferred as to Freddie Lopez from Mexico. At that time, the US Parole
21 Commission determined that the maximum date for Mr. Lopez's supervised release
22 term/custody time on the federal case is August 31, 2019. The Transfer Treaty
23 Determination clearly states at page 1, under heading, "Period of Supervised
24 Release," that if "the full term date of transferee's foreign sentence [calculated to
25 be 8/31/2019] occurs before the completion of the period of supervised release the
26 Commission has imposed, transferee's period of supervised release shall end on the
27 date of transferee's foreign sentence expires." ECF Doc. No. 1,

28 Under 18 USC § 4105 and §4106A, Mr. Lopez cannot be held in custody or

1 on supervised release past the full-term date of August 31, 2019. At the time of this
2 filing, it is over one year past the full-term date of transferee's foreign sentence.
3 Accordingly, supervised release must end, the OSC petition must be dismissed, and
4 Mr. Lopez should be released from custody.

5 In fact, the issue of the maximum sentence date has been previously litigated
6 in this case. At ECF Doc. No. 15, the Government submitted a declaration from
7 the US Parole Commission stating that August 31, 2019 was the maximum date for
8 Mr. Lopez to be on supervision or serve time in custody. At paragraph 4, the
9 declaration states "It is my opinion that the Court reviewing a supervised release
10 action . . . can order any combination of reimprisonment and supervised release that
11 does not exceed the maximum full term date 8/31/2019 as determined by the parole
12 commission." Now that August 31, 2019 has passed, the petition should be
13 dismissed.

14 Unlike the statutes concerning supervised release which specifically set forth
15 rules regarding tolling, see 18 USC §3624(e), the statutes governing the transfer
16 treaty, 18 U.S.C. §4105 and 4106A, have no such provisions. Time is not tolled
17 when considering the maximum term date after which the Court loses jurisdiction.
18 The law is clear: the petition should be dismissed, and Mr. Lopez should be
19 released.

20 In addition to the strong legal justification, equitable concerns also support
21 dismissal. Mr. Lopez already served nearly two years in state custody for the gun
22 possession charge underlying the petition here. He was arrested on December 15,
23 2018 and has been in custody since then (he served his state sentence and has been
24 in federal custody since June). He also has three years of parole in the state system
25 based on the state gun conviction, so he will remain under California's criminal
26 supervision.

27 Finally, he is very medically vulnerable to Covid-19. He has Hepatitis C,
28 active tuberculosis, high blood pressure, and is also clinically obese. Counsel has

1 his medical documents from the jail and will provide them to this Court in a more
2 private manner. Mr. Lopez is currently housed at CCA, which currently has an
3 active outbreak.

4 For all these reasons, Mr. Lopez respectfully requests that this Court dismiss
5 the petition, terminate his period of supervised release, and order him released from
6 custody.

7 Should the Court decline to dismiss the petition, the above information would
8 be put forth to request a sentence of time served on an admission and termination
9 of any further supervised release. Specifically, Mr. Lopez would ask the Court to
10 consider his serious health concerns which put him at a greater risk for serious
11 complications from COVID, the fact that he has served two years in custody for the
12 same allegations underlying the petition, and the fact that his sentence and any
13 period of supervised release should have terminated a year prior to the date of this
14 hearing.

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18 Dated: 9/7/20

Respectfully Submitted,

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20 /s/ Danielle Iredale

21 Danielle Iredale,
22 Attorney for Mr. Lopez
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